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The End of Expansion? The Arctic Council after Estonia's Failed Bid for Observer Status

By Stefan Kirchner (University of Lapland)

Policy Recommendations

- The EU should strengthen its interaction and ties with indigenous peoples in the Arctic and beyond, both in the EU and internationally.
- EU member states should seek closer ties to the Arctic with a long-term perspective.
- In its upcoming new Arctic policy document, the EU should clarify its connections to the Arctic and highlight the practical benefits closer engagement between the EU and the Arctic will have for the people who live in the Arctic, both in the EU and beyond.
- The current informal involvement of the EU with the Arctic Council should be continued even if the Arctic Council should decide to indefinitely discontinue the acceptance of new observers.

Climate change and globalization not only pose serious challenges to Arctic states and the peoples who live there, in particular indigenous peoples, but also contribute to the perception of a rush for resources in the Arctic. This policy brief is intended to give the reader an idea of the policy challenges faced by the EU in the Arctic region, in particular in connection with the international governance of the Arctic.

The Arctic Council (AC) is the most important international policy forum for the Arctic, bringing together eight member states (United States of America, Canada, Denmark, with regard to Greenland, Iceland, Norway, the Russian Federation, and the European Union (EU) member states of Sweden and Finland) and indigenous representative organizations from across the circumpolar Arctic (the Aleut International Association, the Arctic Athabaskan Council, the Gwich'in Council International, the Inuit Circumpolar Council, the Saami Council and the Russian Association of Indigenous Peoples of the North). Due to their lack of full international legal subject status, the latter organizations are not members but are referred to as permanent participants. Over time the international legal status of indigenous peoples has evolved significantly and already includes involvement in international treaty-making. This trend might, from the outside, be perceived as slow and marginal, but the long-term implications should not be lost on the European Union. The Arctic has been a prime site for interactions between the EU and indigenous peoples and the cooperation between the EU and the Saami Council is particularly noteworthy. Experiences made in this context might also be useful in other settings. The Saami (often the spelling "Sámi" is used) are sometimes referred to as Europe's only indigenous people, although this is technically incorrect. The Russian Arctic is home to many indigenous peoples,

also in the region that is geographically part of Europe, for example, the Nenets people in Arkhangelsk oblast. Even within the EU, indigenous peoples are not limited to the Arctic: French Guyana is home to several indigenous peoples. Although the climatic and economic situation there is very different from the cold but affluent EU Arctic, there might be a potential for learning for all sides. This potential should be utilized. Currently, the EU's policies towards indigenous peoples are seen mainly through the lens of foreign policy but as the EU is home to indigenous peoples, indigenous policies must also be seen through the lens of domestic EU policies (Koivurova et al., 2021).

The perception that the EU is an outsider in the Arctic remains strong, both internally and externally. The EU has only itself to blame for this disconnect caused by its past policies regarding the traditional hunting of marine mammals by indigenous peoples. While there is a willingness to learn within the EU, attitudes of some Arctic actors towards the EU are still based on former policies.

Currently, the EU is making efforts to connect better with the Arctic, but the gap between Brussels and the region, while slowly being closed, remains significant. This is evidenced by the fact that the EU (unlike, for example, China or India) does not enjoy observer status at the AC. While the EU, rather than Sweden and Finland as individual states, is a party to the Agreement to Prevent Unregulated High Seas Fisheries in the Arctic Ocean, also referred to as the Central Arctic Ocean Fisheries Agreement (CAOFA), this presence can be explained simply by the competence of the EU in the fisheries area. At the AC, though, the EU has failed to secure a formal role.

This failure is not due to a lack of effort. In recent years, outside actors, in particular non-Arctic states, have sought observer status with the Arctic Council, so to play a role in shaping the future governance of the Arctic region. After a number of candidates were admitted in recent years, the AC seems to have stopped this practice in early 2021 when Estonia's application was rejected. Observers are not voting members of the AC, which is more of a forum rather than a traditional international organization. Their

input however, is valued and plays an important role in the practical and scientific work of the AC that is the fundament for policy decisions. In addition to the scientific reports created by working groups and task-forces of the AC, the member states have used the AC as a forum for the negotiation of a number of international treaties relevant to the Arctic (Koivurova et al., 2021). While Finland and Sweden are parties to these treaties on oil spill prevention, search and rescue operations, and scientific cooperation, the EU is not a party to these treaties.

The European Union has long sought observer status with the AC but is still in the process of overcoming historical diplomatic mistakes regarding the subsistence needs of indigenous peoples that have not yet been forgotten in the Arctic. The fact that the Arctic is undergoing rapid change does not mean that long-term issues are irrelevant. This is particularly the case when it comes to EU opposition to activities that constitute elements of the livelihoods of the peoples of the North. In particular, in the High Arctic, income opportunities are

limited and traditional activities such as hunting, fishing, reindeer herding, or the collection of berries, remain important to ensure food security for local communities. This problem is not unique to the EU. Often environmental NGOs, which in the past have been opposed to the hunting of marine mammals, are also not welcomed with open arms in the Arctic and are at times even perceived as being hostile by the Arctic states. Seen through a diplomatic lens, there has long been a lack of knowledge about the realities of life in the Arctic on the part of decision-makers in the European Union. This is slowly changing, thanks to a willingness to learn and the increased interaction between the EU and Arctic actors.

International Arctic Law is a cross-disciplinary field of research within public international law that is particularly concerned with the governance of the Arctic. There is no single, universally applicable, definition of the Arctic. Existing definitions build on external factors such as vegetation, climate, or geography. The eight states which are touched by the Arctic Circle, an imaginary line at 66° 33' North above which the sun never sets on the midsummer day and

“... the EU is making efforts to connect better with the Arctic, but the gap between Brussels and the region, while slowly being closed, remains significant ...”

never rises at midwinter, are commonly referred to as the Arctic states. Many of the international legal norms that apply to the Arctic are made globally rather than regionally. However, International Arctic Law is growing in importance due to the central role the Arctic plays in the three megatrends of this century: climate change, environmental degradation, and globalization. These trends have been visible for decades but only today is the true scope of their effects becoming more obvious. In the Arctic, these megatrends play out at a significant speed. The Arctic is not only a laboratory to view the future of Earth, it is also a place where new approaches to governance are being attempted in an effort to solve problems of a global scale. These problems are already affecting the people of the Arctic today and with each passing day, also become more important for the rest of the planet. The Arctic is deeply embedded in the international legal community and thus, despite geographical distances from centers of power, it is at the forefront of governance responses to global challenges.

The AC can be seen as an effort on the part of Arctic states and non-state actors to ensure that Arctic actors have a role to play in the international governance of the Arctic. Many of the environmental and social challenges faced by the people of the Arctic are not made in the Arctic but have their origins elsewhere. This is the case not only for long-distance air pollution, climate change, and its many consequences, and micro plastics in the ocean. It is also relevant when it comes to the impact of economic activities on the fragile natural environment of the Arctic, for example through tourism or the extractive industries. Sustainable development remains an important challenge throughout the Arctic and it has, accordingly, long been a focus of the AC. There is, correspondingly, an interest in Arctic governance by Arctic actors. This is not without irony as within Arctic states, decisions are often made in power centers such as Moscow, Ottawa, Stockholm, or Washington D.C. that are located far from the Arctic. Accordingly, the disconnect experienced in Brussels might not be too different from the one felt in Washington with regard to Alaska. There is a desire among many decision-makers in the Arctic to ensure that the international governance of the Arctic, which relies on

international law as a tool for cooperation, will remain “made in the Arctic”. This possibility is limited, chiefly because of the relevance of global regulatory institutions and documents, such as the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS provides the constitutional framework for the international regulation of the uses of the seas, including the Arctic Ocean. Inside and outside of the AC, non-Arctic actors will continue to play a role in the governance of this rapidly changing region.

The Arctic matters for the rest of the world, not just because of climate change, although the effects of climate change are felt very acutely in the Arctic already today. The Arctic is also seen as a frontier for exploration and exploitation, often without sufficient regard for the people who live there. It is important for non-Arctic actors to keep in mind that the Arctic is not like Antarctica. It is not an empty space but has been home to many people for thousands of years. This has consequences for the governance of the Arctic.

Today, the Arctic is governed through international law and on the basis of a willingness to cooperate despite political differences. Differences due to the particular challenges faced by the people who live in the Arctic. Actors from outside the Arctic (and the EU is perceived as such by many in the Arctic) might lack the sensitivity and understanding of the need to cooperate and of the need to find a balance with the defense of Western values, especially with regard to the current government of the Russian Federation. It is understandable that, in times of increasing interest in the Arctic, outside actors want a seat at the table and to be involved in the work of the AC as observers. In November 2020, Estonia, the northernmost state not considered an Arctic state, and neighbor of three Arctic nations, Finland, Sweden, and the Russian Federation, submitted an application for observer status. In June 2021, this application was rejected early in the Russian chairmanship of the Arctic Council. The Arctic Council is based on consensus and no information has been made available, beyond the lack of a consensus, as to why no new observers were admitted in 2021. It is also not, officially, known why Estonia’s application was rejected, but it is important to remember that it is enough for one member to reject the application. The now open question is whether this was a one-time event, similar to the

failure of the AC to adopt a declaration during its 2019 meeting in Rovaniemi, or if the rejection of Estonia's bid signals the beginning of a new era. It remains to be seen whether this will be the start of a more closed approach among AC members and permanent participants.

The door for outsiders to play a role in Arctic governance may well be closing and the EU would be well advised to make use of the remaining window of opportunity. This combination of current concerns and historical differences may make it more difficult for the EU to engage with Arctic states and stakeholders - but the European Union has already begun to learn more about the Arctic and the interests of the people (and peoples) who live there.

Policy Recommendations

The EU should strengthen its interaction and ties with indigenous peoples in the Arctic and beyond, both in the EU and internationally, by institutionalizing communication.

In this manner, the EU could become a more credible actor and help dispel the misunderstandings about its intentions which are based on earlier diplomatic failures to fully understand the cultures and needs of the people who live in the Arctic.

EU member states should seek closer ties to the Arctic with a long-term perspective.

The EU already has a good cooperative relationship with the Saami Council and a number of non-Arctic EU member states have long played a key role in the Arctic, for example in the area of scientific cooperation. Other EU member states could support the EU's efforts by also seeking closer ties with the region.

In its upcoming new Arctic policy document, the EU should clarify its connections to the Arctic and highlight the practical benefits closer engagement between the EU and the Arctic will have for the people who live in the Arctic, both in the EU and beyond.

These connections should not only be created, they also must be made visible and have to provide clear and tangible mutual benefits.

The current informal involvement of the EU with the AC should be continued even if the AC should decide to indefinitely discontinue the acceptance of new observers.

Even if the AC were to stop accepting new observers indefinitely, the EU's commitment to cooperation with the Arctic should not be dependent on short term benefits but should be inspired by more long-term thinking, even if potential future benefits are not immediately evident.

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